

H. B. Day

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE)
SUBSTANTIAL DEVELOPMENT PERMIT)
GRANTED BY SKAMANIA COUNTY TO)
ELIZABETH ROANE JUNG LAND TRUST,)
)
FRIENDS OF THE COLUMBIA GORGE)
and STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
)
Appellants,)
)
v.)
)
SKAMANIA COUNTY and ELIZABETH)
ROANE JUNG LAND TRUST,)
)
Respondents.)

SHB Nos. 84-57 and 84-60

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

These consolidated matters, the requests for review of a shoreline substantial development permit issued by Skamania County to the Elizabeth Roane June Land Trust, came on for hearing before the Shorelines Hearings Board, Wick Dufford (presiding), Lawrence J. Faulk, Gayle Rothrock, Nancy R. Burnett, Rodney M. Kerslake, and Les Eldridge, on May 6, 1985, in Stevenson, Washington. The Board viewed

1 the site on that day. The hearing occupied five days, the final four
2 being at the Board's offices in Lacey, Washington.

3 In these matters, appellant Department of Ecology was represented
4 by Allen T. Miller, Jr., Assistant Attorney General. Appellant
5 Friends of the Columbia Gorge was represented by Keith W. Dearborn,
6 Alison Moss and Joseph E. Shickich, Jr., attorneys at law. Respondent
7 Skamania County was represented by Robert K. Leick, Prosecuting
8 Attorney. Alexander W. Mackie, attorney at law, represented the
9 respondent Elizabeth Roane Jung Land Trust.

10 Motions for summary judgment were filed by appellants, argued and
11 denied prior to hearing. At hearing witnesses were sworn and
12 testified. Exhibits were admitted and examined. Post-hearing briefs
13 were submitted. From the testimony, evidence and argument, the
14 Shorelines Hearings Board makes these

15 FINDINGS OF FACT

16 I

17 The Columbia Gorge lies along a portion of the boundary between
18 the states of Oregon and Washington. It is an 84-mile reach of the
19 Columbia River of extraordinary natural beauty. One attempt to
20 describe its special physical qualities reads:

21 The Columbia Gorge was formed by a combination of
22 natural forces that created a river so powerful that
23 it flows directly through the Cascade Mountain
24 Range. These forces included volcanic action and
25 earth tremors which shifted and distorted the earth's
26 surface.

27 The ultimate contributing force was the Missoula
flood, which poured a 400-foot high wall of water

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1 down the course of the early river for a period of
2 three or four days. This flood was so powerful that
3 it scoured the landscape with room-sized boulders,
4 and carried material from Idaho and Montana as far
5 south as the present site of Eugene. Over the
6 centuries, erosion and weathering have played their
7 parts. All of these forces together with the natural
8 forest cover and wildlife have produced the water gap
9 we know today as the Columbia Gorge, a phenomenal
10 natural masterpiece.

11 The beauty of the Gorge occurs on a grand scale
12 usually found only in the higher reaches of mountain
13 ranges. The Walls of the Gorge rise as high as 3,000
14 feet above the river in less than three miles. Sheer
15 rock pallisades expose millions of years of geologic
16 history. Large monoliths and the Cascade Slide, the
17 largest landslide in North America, contribute to the
18 grandeur of the Gorge. Densely forested slopes
19 drained by rushing streams provide an unusual habitat
20 for wildlife.

21 Spectacular seasonal changes make the Gorge an
22 everchanging experience of beauty and color from the
23 advent of spring, with its abundance of wildflowers,
24 through the fall when brilliant deciduous trees are
25 set against a background of deep green forests. Even
26 winter is an experience. Snow-capped volcanoes stand
27 above ridges and dark cliffs arrayed with hundreds of
misty waterfalls, some frozen against the canyon
walls awaiting spring....

17 A Resource Management Program for the Columbia Gorge, Washington
18 Columbia River Gorge Commission (1976), pp. 2, 3.

19 II

20 Under the definitions of the Washington State Shoreline Management
21 Act (SMA), the north shoreline of the Columbia River through the Gorge
22 is classified as a shoreline of statewide significance.

23 III

24 Respondent Elizabeth Roane Jung Land Trust (Land Trust) is the
25 owner of approximately 78.5 acres of land which border the north shore

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1 of the Columbia River well within the Gorge. The Land Trust seeks to
2 subdivide this tract into 83 lots for a housing development to be
3 called "Hidden Harbor."

4 The site lies in Skamania County, Washington, at river mile
5 139.75, about two miles west of the monolith Beacon Rock. Bonneville
6 Dam lies about six miles upstream to the east. On the Oregon side
7 Horsetail Falls and Multnomah Falls are about a mile downstream and
8 about three and one-half miles downstream respectively.

9 IV

10 Respondent Skamania County (County) is a political subdivision of
11 the state with responsibility under the SMA for administering a permit
12 system for "substantial developments" on shorelines within its
13 jurisdiction.

14 This permit system implements the Skamania County Shoreline Master
15 Program (SCSMP), adopted in 1974 as use regulations for the County's
16 shorelines and incorporated into the Washington Administrative Code at
17 WAC 173-19-380.

18 The Land Trust's project site is within an area designated
19 Conservancy under the SCSMP.

20 V

21 Appellant Department of Ecology (DOE) is a state agency with
22 responsibility to oversee compliance with the policy and provisions of
23 the SMA.

24 VI

25 Appellant Friends of the Columbia Gorge (Friends) is a non-profit

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1 conservation organization of about 3,500 members, which is concerned
2 with development in the Gorge. The organization has members in both
3 Washington and Oregon who use the Gorge area for recreation.

4 VII

5 The Land Trust applied to the County for a substantial development
6 permit on July 1, 1983, and after extensive local hearings and
7 discussion, was granted a permit on September 25, 1984. The Friends
8 filed their appeal of the granting of the permit with this Board on
9 October 29, 1984. This request was certified by DOE and the Attorney
10 General pursuant to the SMA on November 19, 1984. The DOE filed its
11 request for review on November 6, 1984.

12 VIII

13 An environmental impact statement (EIS) was written in relation to
14 the project, pursuant to the Washington State Environmental Policy Act
15 (SEPA), and was available in final form for the County Commissioners
16 when they made their decision to issue the substantial development
17 permit.

18 IX

19 Also available to the County Commissioners when they made their
20 permit decision was a set of Conditions, Covenants and Restrictions by
21 which the Land Trust proposes to limit and control the residential
22 development which they desire on the subdivision site.

23 X

24 The current use of the property is for a single residence and as
25 grazing land. Burlington Northern Railroad tracks lie just beyond the

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1 northern boundary of the tract and run parallel to it. Immediately
2 north of the railroad tracks is State Route 14, the major highway
3 traversing the Gorge on the Washington side. Skamania Landing Road
4 runs from the highway across the tracks and into the Land Trust
5 property near its eastern boundary. Duncan Creek flows through a
6 small segment of the northeast corner of the tract. The property has
7 approximately 2,200 feet of Columbia River waterfront to the south.

8 XI

9 The project site lies atop basalt formations in a portion of the
10 Skamania Landslide area, site of an ancient slide not now known to be
11 active. The soils show evidence of alluvial deposition from river
12 flooding over the years.

13 The upland topography slopes up from the river with elevations
14 ranging from a low point on the bank of about 28.5 feet above sea
15 level (MSL) at the southwest corner to sixty feet at the northwest
16 corner. The easterly portion of the riverfront is defined by a
17 slightly higher bank along the 40- and 50-foot contours. Much of the
18 interior of the property is lower than this bank, approximately 20
19 acres lying below the 100-year flood level, calculated presently at
20 34.5 MSL.

21 No areas on the site have a slope in excess of 20 percent and
22 slopes steeper than 10 percent occur only on portions of three of the
23 proposed building lots.

24 XII

25 The river's edge along the property below the bank is a flat beach

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of sand and rock which in parts supports willow saplings and cottonwood seedlings. The bank area shows evidence of ongoing erosion, with bank undercutting, the exposure of large boulders and the undermining of tree roots in some locations.

XIII

The river as it passes the property is relatively narrow (about 2,500 feet) and deep (50 to 70 feet). Its flow is influenced by releases from nearby Bonneville Dam, which respond to electrical power demand, and by Pacific Ocean tides which are near the upstream limit of their effect at this point. These two forces produce daily water level fluctuations. Seasonal changes respond to the normal wet and dry cycles of annual climate. High water occurs in May-June, reflecting watershed snow melt. Low water will occur in the September-October period.

Normally expected river stages will be in the 6 to 10 feet MSL range at low water, 10 to 16 feet in the intermediate period and 16 feet or greater during the spring runoff. The average discharge past the site is in the neighborhood of 193,000 cfs. The ordinary high water mark is somewhere between the 20- and 25-foot contours.

XIV

The flora on the site reflects a blending of species and habitat types. The northern boundary is screened from the highway and railroad by second growth conifers, and associated shrubs and ground cover. Moving toward the river, the conifers give way to deciduous hardwoods dominated by oak and ash. Black cottonwood becomes frequent

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1 nearer the river.

2 The central portion of the property is a large meadow area, which
3 is harvested for hay in the summer. The meadowland slopes gently to
4 the western boundary of the property. It forms the upper end of a
5 wetland system which drains to the west into a series of ponds and
6 lakes and from thence into the Columbia.

7 Just how much if any of the meadow area should be classified as a
8 wetland as a matter of biology is the subject of dispute among
9 experts. Reed canary grass, a wetland indicator, is the dominant
10 species at the central western edge of the property. Beyond a
11 distinct vegetation line a short distance into the tract, reed canary
12 grass is thinner in occurrence ultimately giving way to pure stands of
13 timothy, a species which would not call for a wetland designation.

14 XV

15 In its present relatively undeveloped state, the property is a
16 habitat for a variety of wildlife typical of forest, meadow and
17 wetland areas. It is located within a much larger area of similar
18 relatively undisturbed habitat, providing both living space and a
19 corridor for passage. Deer are probably the most numerous of the
20 larger mammals which utilize the property.

21 No threatened species appear to be residents to the site.

22 XVI

23 The application for the substantial development permit describes
24 the proposed new use of the property as "78 1/2 Acre Lot Subdivision
25 (59 percent) and Wildlife, Wetland and Deep Water Habitat (41

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percent)." The total cost as fair market value of the project is listed as \$1,500,000.

The nature of the proposal is more particularly described in the EIS and on a series of maps submitted by the architect for the developer. These sources indicate that the plan is to create 83 residential lots averaging 20,000 square feet each and occupying a total of 38.38 acres. Another 7.34 acres would be devoted to paved roadways and parking areas. Of the developed acres, approximately 17 acres would be covered with fill, including all or part of 34 of the residential lots.

The term "Deep Water Habitat" is a euphemism for a boat moorage facility to be located in an artificially created embayment excavated in the southwest part of the property. This would be connected to the river through a dredged access channel. The embayment would cover about three acres.

These three acres are included in the 41.75 percent of the project which the architect has labeled as "open and natural." Also a part of this percentage are 5.5 acres of periodically inundated shoreland riverward of the stream bank between elevations 28 and 12 feet MSL and 11.2 acres of second class tidelands located further out in the stream. These latter 16.7 acres are essentially part of the river itself.

This leaves about 13 "open and natural" acres, of which about 5 acres are required for the development's well field and for its septic system drain field. The remaining 8 acres would be devoted to

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wildlife areas and a greenbelt easement.

XVII

The proposed excavation would dig down to elevation 0.0 MSL and would produce approximately 170,000 cubic yards of fill material. The access channel would be punched through the bank to the river and would involve some dredging in the river itself. The bottom width of the channel would be about 50 feet. The sides of the embayment would be on a 3:1 slope. The access channel would be sloped at 2:1 and aligned with one side of the basin.

XVII

The 170,000 cubic yards of material produced by excavation would be spread over about 17 acres of land and entirely fill all of the remainder of the site which lies below elevation 34.5 MSL. Maximum fill depth would be approximately nine feet.

The 34.5 MSL elevation represents the current estimate of the height of the 100-year flood. The idea is to raise all lots to at least this level as a floodproofing measure.

The excavated basin and the area to be filled represent over 25 percent of the tract in which the present natural environment would be completely eliminated and replaced by elements of the development.

XVIII

The addition of the fill material would substantially alter the topography and, thus, the surface drainage characteristics of the site. At present over 80 percent of the area slopes toward the west and drainage is to the wetlands down gradient in that direction. With

1 the fill, this direction of the surface water run off would be
2 discontinued. Water would be redirected toward the center of the
3 project, collected there and then conducted through drains directly to
4 the river.

5 XIX

6 The development would be supplied with domestic water from a
7 single community well in the northwest corner of the tract. The well
8 has proven capable of producing 100,000 gallons per day, more than
9 enough to provide the 800 gallons per day per service thought to be
10 required for the 83 lots.

11 Six-inch service mains would be buried under the streets. A
12 60,000 gallon storage tank would be installed. The storage tank would
13 hold enough water to meet requirements of all lots at full development
14 for one day. A three-pump system would supply peak demand flow of 100
15 gpm and a peak fire flow of 500 gpm.

16 Ground water on the site is part of an unconfined (water table)
17 aquifer which flows toward the river.

18 XX

19 Sewage disposal would be by individual septic tanks and
20 drainfields for the lots which are not filled. Thirty lots to be
21 totally or substantially filled would, however, have septic tanks
22 connected to a sewer collection system which would pipe the effluent
23 to a leaching area near the center of the site. Three alternating
24 drain fields would be provided from a pumping station. Each would
25 contain 2,500 feet of drain line and cover 20,000 square feet. Two

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would be used at once and the third held in reserve. The drainfields would be located over 12 feet above the ground water aquifer and well beyond the cone of influence of the water well.

XXI

The substantial development permit describes the development authorized simply as "Hidden Harbor Subdivision." However, the permit incorporates the maps submitted by the developer for the preliminary plat and is made subject to numerous terms and conditions also incorporated by reference. These include the following conditions of the plat:

- 1) Subdivision shall meet all requirements of Skamania County Subdivision and Platting Ordinance No. 1971-1, and Skamania County Fire District No. 5 letter dated April 5, 1984 regarding fire protection requirements;
- 2) Private roads shall be developed in accordance with Skamania County Private Roads and Construction specifications;
- 3) Top soil in fill areas shall be stripped, stock piled, redistributed following completion of fill activity, graded and seeded to prevent erosion. Marina cut slopes shall also be seeded. Excavation and fill activity shall be accomplished during dry summer months. The U.S. Soil Conservation Service shall be consulted with regard to suitable species (grass mixture or other plant material) to be established;
- 4) A 15 foot pedestrian easement of land be dedicated to Skamania County for access from Skamania landing Road to the Columbia River;
- 5) Place notation on final plat map that vegetation in wildlife reserve area in block A and G, greenbelt area in blocks A and F, community wetlands along Columbia River and wildlife area around the subdivision water system shall remain undisturbed

1 except as necessary to remove trees or other
2 vegetation posing a threat to life or property.
3 Notation shall also state that no structures
4 (including boat docks) will be permitted within these
5 areas (including the building setback line on the
6 north edge of the community wetland), except for the
7 well and reservoir in the wildlife area;

8 6) Place notation on plat map that the height of all
9 building structures shall not exceed 28 feet in
10 height above average grade level and that such
11 structures shall be of colors which blend rather than
12 contrast with the surrounding landscape;

13 7) If during construction or development of the
14 marina or subdivision roads, an archaeological or
15 historical site is discovered, construction or
16 development activity shall be halted and the State
17 Office of Archaeology and Historic Preservation shall
18 be notified and allowed to assess the site;

19 8) Items under the Final Environmental Impact
20 Statement Response Index pages 2.19 through 2.21,
21 item numbers 1 through 4.e.2 inclusive, except item
22 number 4.c are to be included as preliminary plat
23 conditions.

24 The referenced letter from Fire District No. 5 requires the
25 placing of hydrants every 500 feet along roads and a grade of less
26 than 10 percent on the boat launching ramp in the embayment for access
27 to water from that source if needed.

The referenced items from the EIS are responses to concerns raised
by the Oregon and Washington Columbia River Gorge Commissions.

Reproduced verbatim these items are:

1. No response necessary.
2. Impacts on groundwater have been previously discussed. Review and approval of design plans prior to construction of any of the facilities, i.e., water system, storm drains, sewage disposal by the State and local governmental

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1 agencies, will provide insurance that these
2 facilities are properly designed.

- 3 3. A Corps of Engineers dredging and filling permit
4 is required prior to construction of the boat
5 basin. Obtaining this permit is time consuming
6 and costly. This is the review period where the
7 impacts of construction of the boat basin will
8 be discussed in greater detail and details of
9 the best design are developed. Approval of the
10 subdivision and preliminary plat subject to the
11 applicant receiving the Corps of Engineers
12 dredge/fill permit is an acceptable alternative.

13 A discussion of this impact is contained in the
14 response to the State Department of Fisheries
15 letter.

16 4.a.1 and 2:

17 The developer will construct only roads. Only
18 those trees in the actual 30 foot roadway will
19 be removed. Trees in the 15 foot open ditch
20 area on both sides of the roadway will be
21 retained if possible. During the roadway survey
22 all trees larger than 6" diameter located within
23 the 60-foot roadway easement will be identified
24 and their coordinates will be recorded.

25 Retention or saving of trees on each lot will be
26 the responsibility of the design review
27 committee.

- 28 4.a.3: Agree that trees will be protected during
29 general construction activities.

- 30 4.a.4 Agree that replacement of trees shall be a
31 species currently found on site.

- 32 4.a.5: Agree that trees on shoreline will be
33 retained every where but at the marina
34 inlet. The fill line has been moved back to
35 the north to a minimum of 50'. All activity
36 is restricted between south property line
37 (top of bank) and 50' to the north, thereby
38 retaining all natural vegetation.

- 39 4.a.6: Agree that all trees and vegetation in
40 wildlife and natural area shall be preserved

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1 in its natural state unless it poses a
2 hazard. Such trees shall be replaced in a
3 compatible species.

4 4.a.7: Agree that landscape plans shall be required
5 for each home site prior to residential
6 construction and shall be reviewed by the
7 Architectural Review Committee of Hidden
8 Harbor and/or shall be submitted to the
9 Planning Department for review.

10 4.a.8: Agree that all endangered, threatened, or
11 sensitive plant species shall be protected.
12 (Please see Response #29 for additional
13 information on this subject.)

14 4.a.9: Agree that vegetation in the natural wildlife
15 area, in the greenbelt and in community
16 wetlands shall remain undisturbed except as
17 necessary to remove trees or other vegetation
18 posing a threat to life or property.

19 4.b: Soil disruption shall be minimized.

20 4.b.1: Roads and other improvements shall be
21 designed to minimize excavation and gradings:

22 4.b.2: Agree that disruption of soil due to
23 excavation, fill or construction should be
24 accomplished during dry summer months.

25 4.b.3: Agree that disturbed areas, not to be used
26 for structures, roads, driveways or other
27 improvements, should be promptly revegetated
to prevent erosion.

4.b.4: Agree that top soil in fill areas shall be
stripped, stockpiled, redistributed following
completion of fill activity, graded and
seeded to prevent erosion.

d.1: Agree that structures shall be of colors
which blend rather than contrast with the
surrounding landscape.

d.2: The height of all structures on site shall
not exceed 28'.

1 d.3: Agree that light fixtures shall be hooded to
directed light downward and minimize direct
glare.

3 d.4: No docks shall be permitted on the Columbia
4 River water front lots. No private docks
shall be allowed in the harbor.

5 e.1: Agree that if, during construction or
6 development, an archaeological or historical
7 site is discovered, construction or
8 development activity shall be halted and the
State Office of Archaeology and Historic
Preservation shall be notified and allowed to
assess the site. (See Response #8 for
additional information.)

9 e.2: The State Office of Archaeology and Historic
10 Preservation shall be advised of this
11 requirement and the dates during which
construction activity will be ongoing.

12 The permit also requires the developer to obtain a Washington
13 State Hydraulic Project Approval from the Departments of Fisheries and
14 Game and incorporates several conditions concerning the intersection
15 of Skamania Landing Road and State Route 14. They are contained in a
16 letter dated September 21, 1984, from the developer's architect to the
17 County Commissioners. In pertinent part this letter reads:

- 18 1. The offsite roadway and intersection will be
19 prepared to county standards and satisfactory to
the County Engineer.
- 20 2. A phasing plan for development of the site shall
21 be approved and recorded prior to final plat
reading.
- 22 3. The property owner is willing to participate in
23 any future development plan for improving
24 subject intersection as determined necessary by
the County of Skamania and the State of
Washington.

25 Further prior to sale of lots a waiver of protest
26 will be filed, if required, for an area wide L.I.D.

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1 for intersection improvements on SR-14 and Skamania
2 Landing Road, with the applicants property paying a
pro-rated share of the L.I.D. cost.

3 XXII

4 The project authorized and under review here, as described in the
5 documents incorporated into the permit, involves the subdividing and
6 preparation of the property for eventual construction of individual
7 homes.

8 The principal construction components of the project are
9 excavation of the embayment, filling the lower elevation lots,
10 installing the water system and drains, construction of the community
11 sewage system, building roads and bringing in utilities.

12 Though some of the conditions included in the permit purport to
13 restrict the way individual homes might be built, the construction of
14 such homes is not something this developer has applied to do.

15 XXIII

16 In the conditions incorporated into the permit, references to the
17 Design Review Committee or the Architectural Review Committee are
18 references to bodies to be organized pursuant to the Conditions,
19 Covenants and Restrictions proposed for the development.

20 While descriptive of limitations the Land Trust may impose on lot
21 purchasers, these Conditions, Covenants and Restrictions are not made
22 part of the permit and the County has no role in enforcing them, if
23 and when they are adopted. Moreover, by their terms as proposed, they
24 may be amended or rescinded upon the written consent of the owners of
25 a majority of the lots in the subdivision.

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XXIV

The project would have some negative effects on wildlife through the removal of habitat and the increase of human activity on the property. The boat channel would sever the Columbia River shoreline corridor. However, the layout of the development is designed to reduce impacts on wildlife. Along the northern border a 75-foot (2-1/2 acre) wildlife easement would be maintained and the 1-1/2 acres around the water well at the northwest corner would be left, by and large, in a natural state. The preservation of trees and natural vegetation in these areas would preserve an upland corridor for wildlife to pass through. On the east side of the property there are 4-1/4 acres which lie across Skamania Landing Road from the residential lots. This strip is proposed to remain undeveloped as a wildlife area.

The effects on wildlife would not be significantly adverse.

XXV

The project would initially alter the flora of much of the site. Existing vegetation would be removed in the excavated and filled areas and clearing would be conducted for roads and housing sites. The modest contribution of the property to the wetland system to the west would cease because of changes in the drainage pattern.

The filled area, however, is proposed to be landscaped and revegetated. Replacement trees will be of species currently found on site. Above the fill, the plan is to leave large portions of the natural vegetation in place. Houses are to be set back at least 50

1 feet from the ordinary high water mark, behind the crest of the
2 riverbank, and the existing trees along the easterly portion of the
3 bank would not be disturbed.

4 The effects on flora would not be significantly adverse.

5 XXVI

6 Given the natural areas along the north and east boundaries of the
7 site and the essentially undisturbed setback along much of the
8 riverbank, the housing on the project would be largely screened from
9 view. The development should be difficult to see from State Route
10 14. Neither should there be significant intrusion into views from the
11 river. The visual picture from the freeway in Oregon across the river
12 should be even more substantially screened by trees along the shore on
13 the Oregon side.

14 Thus, from vantages where members of the public might normally
15 view the site, we find that screening would prevent significant
16 adverse aesthetic impact. It follows, then, that the clustering of
17 residential development, as opposed to the construction of 83 detached
18 single-family dwelling as planned, would have little if any advantage
19 from an aesthetic standpoint.

20 XXVII

21 No significant adverse effects were shown to be the likely result
22 of the proposed drainage, water supply and sewage disposal aspects of
23 the project.

24 XXVIII

25 The proposed embayment, the "Hidden Harbor" from which the

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1 development takes its name, is described in promotional material as
2 the "centerpiece" of the undertaking. Its design raised questions
3 concerning water quality impacts and other impacts on fish.

4 No physical modeling was done to check the flushing
5 characteristics of the basin. The County's permit evidently intended
6 that detailed evaluation of design and construction be deferred to the
7 later Corps of Engineers' permit process.

8 Nonetheless, we are persuaded that adequate analysis was prepared
9 and presented on this matter at the hearing before us. We
10 find--taking into consideration the chosen design, the characteristics
11 of river flow and experience at comparable facilities elsewhere--that
12 the water turnover will, more likely than not, be frequent enough to
13 avert dissolved oxygen and temperature problems. Moreover, we find
14 that interference with the migration of juvenile salmonids or unusual
15 losses from predation are unlikely to result from construction of the
16 proposed basin, as designed.

17 XXIX

18 Apart from the impacts of the embayment's design, however, we are
19 concerned with the effects of its operation as a boat launching
20 facility and moorage. Little information has been provided on this
21 matter. The permit does not regulate the use of the embayment.

22 In proceedings before the County, the architect for the Land Trust
23 stated that the proposal is to construct 54 slips varying from 40 feet
24 to 25 feet and a "small boat basin" for 20 feet and under. A 15-foot
25 wide concrete launching ramp was also mentioned.

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1 The drawings incorporated into the permit show this mix of mooring
2 facilities, fully occupying the available water space. In addition a
3 parking lot is shown on the west bank of the embayment, consisting of
4 spaces for cars, an area for boat trailers and an observation area.
5 The precise dimensions of these upland support facilities are not
6 given and the permit does not specify the number of cars and trailers
7 which may be accommodated.

8 The EIS states that the facility could add a maximum of 83 boats
9 to the local area, but nothing in the permit imposes any limitation.
10 The Conditions, Covenants and Restrictions explicitly contemplate the
11 storage of boats on the residential uplands.

12 The slips provided are in the main, meant for long-term, not
13 transient, moorage. The stated intention is to exclude the general
14 public and allow access to the harbor only for owners and their guests.

15 It is apparent, then, that the proposed facility contemplated
16 would be used to moor, park or launch a substantial number of
17 watercraft. The precise number is open ended. The Land Trust
18 introduced pictures of numerous existing boat launching and moorage
19 facilities in the immediate area, none of which even approach the
20 "Hidden Harbor" in size, complexity or boating population.

21 Yet, no study or data was provided on the projected intensity of
22 activity in the harbor or on the potential impacts of such projected
23 activity. The Land Trust disclaims any intention to provide boating
24 supplies or services. But exactly what would be provided is either
25 unknown or unstated. No information was provided on what, if any,

1 facilities would be available to cope with spills, injuries, accidents
2 or petroleum fires. If fuel cannot be purchased on the site, to what
3 extent would it be stored and handled there privately by residents?
4 Neither the permit nor the application and related documents address
5 the question of the pump out of sanitary facilities.

6 Under these circumstances the Board is unable to determine what
7 the impacts are likely to be of creating the embayment in conjunction
8 with the subdivision.

9 XXX

10 No formal marketing or "needs" studies for installing the boating
11 facility proposed were undertaken. Indeed, the size of the excavation
12 was dictated by nothing more than the need for fill. It is planned to
13 be exactly big enough to provide the soil necessary to bring all other
14 on-site areas, below the 100-year flood plain elevation, up to that
15 elevation.

16 XXXI

17 At present the tract is fenced and no public access to the river
18 or the river beach is provided. The "Hidden Harbor" subdivision is
19 planned as a completely private development. The public is not
20 invited to use its playground, walkways, bike paths, or boating
21 facility. The project will increase the number of persons who may
22 enjoy this shoreline of statewide significance by the number of
23 families who qualify as purchasers in an exclusive setting.

24 The only provision relating to access by the public at large is a
25 condition added by the County calling for the dedication to the County

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1 of a 15-foot wide pedestrian easement along the lower eastern boundary
2 of the property, from Skamania Landing Road to the Columbia River.
3 Nothing is known of what the County intends to do with this easement.
4 The Land Trust is not required to develop it in any way.

5 No provision for a corridor for public passage through the
6 property either along the river's edge or elsewhere is proposed or
7 required by the permit.

8 XXXII

9 The project site has been recurrently inundated by floodwaters.
10 Indeed, an ancient flood channel of the river runs directly across the
11 parcel. Major floods in 1894 and 1948 reached elevations well above
12 40 feet MSL and covered parts of the property with 12 to 17 feet of
13 water.

14 In more recent years, however, the flood hazard situation has
15 appreciably changed. The Columbia River system above Bonneville Dam
16 is now to a major extent a series of large pools. The various
17 reservoirs provide some storage and, thus, a degree of flood
18 protection.

19 The discharge of the 1948 flood at the site was probably in the
20 neighborhood of 1,100,000 cfs. Because of the reservoir storage
21 system, essentially completed in 1973, the 100-year flood discharge at
22 the site is now estimated at around 700,000 cfs. This discharge would
23 result in the site area being inundated at elevations lower than 34.5
24 feet MSL.

25 Computer-assisted analysis shows that if the area below 34.5 feet

1 MSL is eliminated from the flood plain (by filling), the effect in a
2 100-year event would not be appreciably to raise the level of water in
3 the present river channel.

4 We find that the 100-year floodway of the site is roughly the same
5 as the line of ordinary high water.

6 XXXIII

7 But even though, as a matter of mathematics, filling the property
8 would not force the predicted 100-year flood discharge out of the
9 usual river banks, the computation of such information is not in
10 itself a complete analysis of flood risk.

11 Flood waters can now reach parts of the property without
12 overtopping the bank at its present low point of 28.5 MSL. This
13 occurred in 1974 when flooding backed up into the lower area through
14 the wetland chain to the west. The DOE estimates that lower parts of
15 the property are now flooded on a one-in-ten- to one-in-twenty-year
16 frequency.

17 The proposed 17-acre fill would, of course, change that. However,
18 the question remains whether elevating the land to the level shown on
19 a statistical basis to have a one percent chance of flooding in any
20 year is an adequate margin of safety for the construction of permanent
21 residences at this particular locale. Certain site specific risk
22 factors do not appear to have been considered.

23 The river is relatively straight and narrow at the proposed site.
24 The deepest thalweg (channel bottom) is closest to the northern
25 shore. These factors contribute erosive velocity which is at work

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1 eating into the bank along the subject property. This is evidenced by
2 the lack of sedimentation in front of the site and exposed boulders
3 and tree roots along the shore. The bank along the project site is
4 under attack by the river.

5 The site is within a long, unobstructed wind passage. Winds of 30
6 miles per hour or more sometimes sweep through the chute formed by the
7 Gorge. Wind effects can raise the water level several feet. Waves
8 produced in storm conditions hammer at the shoreline. Tidal influence
9 (though minor) also increases river elevations.

10 Flood discharges on the lower Columbia typically continue over a
11 considerable time span. The 1948 flood lasted over a month and a half
12 and was near peak discharge for about two weeks.

13 If the factors of channel configuration, river velocity, wind,
14 waves and tide were combined with a long-lasting flood event,
15 tremendous force could be exerted against the already eroding river
16 bank, and the precise path a flood might follow becomes problematical.

17 The risk must also be considered in light of the imperfection of
18 flood discharge prediction. The 100-year flood discharge is an
19 estimate of probability based on physical measurements and historical
20 experience. It does not describe exactly what will actually occur.
21 It could easily be a foot or two off.

22 XXXIV

23 At the project site the bank is unprotected. It is part of the
24 aesthetic design of the project to leave it that way. No shoreline
25 protection works are required by the permit.

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1 We find that the proposal to fill the property to the predicted
2 100-year flood line while leaving the river bank in its natural state,
3 has not been adequately analyzed from the standpoint of flood hazard
4 to the residential community which would be encouraged to locate there.

5 XXXV

6 In addition to floods, other natural forces which contribute to
7 the Gorge's beauty can make it a rather inhospitable place. In the
8 vicinity of the project, rainfall can exceed 80 inches annually. As
9 noted, powerful winds are a well-known phenomenon. The fierce and
10 punishing ice storms of winter are legendary. Wild and turbulent
11 weather is not uncommon.

12 Indeed, a stated reason for locating the boat harbor inside the
13 property is because it is too stormy to put such a facility out in the
14 river. Yet, in this locale, we are asked simply to assume that there
15 is a demand for the exclusive housing development contemplated at
16 "Hidden Harbor."

17 XXXVI

18 The population of Skamania County is less than 8,000 people. The
19 economy has been dominated by the wood products industry and the
20 recent decline in that field has brought growth in the County to a
21 standstill. In 1980 the total number of occupied housing units was
22 2,819 with an occupation ratio of 2.79 persons per unit.

23 Assuming full development of the 83 lots at "Hidden Harbor" and an
24 occupancy ratio of 2.79 persons per unit, the development would
25 increase the County population by 231 persons or by almost 3 percent.

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Between 1980 and 1984 the number of building permits for new dwellings in Skamania County ranged between 10 and 13 per year.

Adjacent to the "Hidden Harbor" on the east is a subdivision called Skamania Landing which was platted in 1964. Although there are 98 lots, only 33 homes have been constructed.

In 1980 census data indicated that nearly 18 percent of the housing units in the County were unoccupied. As of 1982, 60 percent of the 348 lots of five acres or less in size between Beacon Rock and the Clark/Skamania County line remained undeveloped.

XXXVII

At "Hidden Harbor" we are aware that costs of building the boating facility will add to the cost of the lots to buyers. But no market surveys, analysis of employment opportunities or other economic studies speaking to the demand for the kind of housing contemplated have been shown to this Board.

Appellants have shown that this boating and housing development might never be fully built or might even be abandoned when partially finished, leaving facilities incomplete and untended.

Moreover, we do not know what will happen if the build-out is only partial. We do not know how the water system, the sewage system or the boat basin would be operated and maintained on a permanent basis. The permit makes no provision for the ongoing management of these facilities and provides no means for dealing with the possibility that incomplete development will put the continuous operation of these facilities beyond the capability of the residents which do locate on

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1 the site.

2 XXXVIII

3 Any Conclusion of Law which is deemed a Finding of Fact is hereby
4 adopted as such.

5 From these Findings of Fact the Board comes to these

6 CONCLUSIONS OF LAW

7 I

8 At the outset we are called upon to resolve an issue of the
9 geographic coverage of the SMA at the project site.

10 The Land Trust contends that the statute and Skamania County
11 Shoreline Master Program (SCSMP) apply only to that area 200 feet
12 landward from the "floodway,"¹ which here is about the same as the
13 ordinary high water mark along the river bank. This interpretation
14 would exclude most of the development from the reach of the SMA. But
15 some features, such as roads, drains, landfill and the embayment would
16 lie athwart the jurisdictional line, partly within and partly without
17 the shorelines.

18 II

19 Shorelines of state-wide significance include "wetlands"

20

21

- 22 1. RCW 90.58.030(2)(g) presently defines "floodway" as "those
23 portions of the area of a river valley lying streamward from the
24 outer limits of a watercourse upon which flood waters are carried
25 during periods of flooding that occur with reasonable regularity,
although not necessarily annually, said floodway being identified,
under normal condition, by changes in surface soil conditions or
changes in types or quality of vegetative ground cover conditions."

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1 associated with major rivers, RCW 90.58.030(2)(3)(vi).² The
2 coverage issue turns on a determination of the area on the site
3 included within the term "wetlands" under the approved master program.

4 When initially enacted in 1971, the SMA definition of "wetlands"
5 included the following:

6 those lands extending landward for two hundred feet
7 in all directions as measured on a horizontal plane
8 from the ordinary high water mark; and all marshes,
9 bogs, swamps, floodways, river deltas and flood
10 plains associated with the streams, lakes and tidal
waters which are subject to the provisions of this
act; the same to be designated as to location by the
department of ecology. (Emphasis added.) Section 3,
chapter 286, Laws of 1971, 1st ex. sess.

11 Such were the terms of the statute in 1972 when the DOE promulgated
12 chapter 173-22 WAC, Designations of Wetlands Associated with
13 Shorelines of the State. In relevant part, WAC 173-22-040 then
established "designation criteria" as follows:

15 (2) River deltas and flood plains.

16 (a) On river deltas and flood plains where no dikes
17 exist, the wetland area shall be from toe to toe of
18 the valley floor or two hundred feet from the
ordinary high-water mark, whichever is greater,
except in those limited instances where the
19 designation of such an area would be contrary to the
policy of Chapter 90.58 RCW. (Emphasis added.)
Order No. DE 72-15; filed June 30, 1972.

20 In 1973, DOE adopted a new section to the regulation, WAC

21 173-22-055, which reads:

22
23 2. In addition to the Columbia River shorelines involved here, Duncan
24 Creek which touches the northeast corner of the tract creates an
25 additional short strip of regulated shorelines, but these are not
shorelines of state-wide significance.

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1 CONFLICTS BETWEEN DESIGNATIONS AND CRITERIA. In the
2 event that any of the designations shown on the maps
3 conflict with the criteria set forth in WAC
4 173-22-040 the criteria shall control. The boundary
5 of the designated area shall be governed by the
6 criteria.
7 Order No. DE 73-11, filed July 20, 1973.

8 III

9 The language quoted in the preceding paragraph was effective and
10 governing on September 6, 1974, when the DOE approved the shoreline
11 master program submitted by Skamania County. WAC 173-19-380. The
12 SCSMP was filed with the Code Reviser and incorporated into the
13 Washington Administrative Code (WAC) on December 30, 1974. See RCW
14 90.58.120.

15 The approval evidenced DOE's opinion that for shorelines of
16 statewide significance the program provided "the optimum
17 implementation of [the SMA] to satisfy the statewide interest." RCW
18 90.58.090.

19 IV

20 The SCSMP incorporates verbatim the above-quoted original
21 statutory definition of "wetlands," including the reference to "river
22 deltas and flood plains," but does not define these latter terms.
23 SCSMP, p. 58.

24 In the body of the program, among the policy statements for
25 residential development, is:

26 Residential structures shall not be built in the
27 floodway, and if any are to be built in the flood
plain, they shall be built above 100 year flood
levels on approved fill. SCSMP, p. 25.

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1 One of the landfill policy statements reads:

2 Filling of flood plain areas shall require a
3 shoreline substantial development permit. SCSMP,
p. 17.

4 The program's use regulations contain a brief section entitled
5 "Flood Plain Development Regulations," which states in its entirety:

6 1. No structure other than farm buildings may be
7 built in a flood plain, unless the flood plain is
adequately flood proofed to protect developments.
8 SCSMP, p. 42.

9 V

10 These textual references, considered in the context of the
11 statutory and regulatory language in effect at the time the SCSMP was
12 adopted, lead us to conclude that the approved program was intended to
13 cover at least the 100-year flood plain within "wetlands" associated
14 with rivers.

15 This would be consistent with the then-pertinent designation
16 criteria and the idea of "optimum implementation." No one argues that
17 the 100-year flood would not physically exceed 200 feet from the
18 ordinary high water mark in parts of the County. On the very property
19 under consideration such a flood would cover a substantially greater
20 area. Where this is the case, the original designation criteria
21 called for the "wetland" to reach from "toe to toe of the valley
22 floor." To make sense, this phrase must include at least the area to
23 be inundated in a 100-year flood.

24 VI

25 With the master program document, DOE approved certain maps. See
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1 SCSMP, p. 49. These show, in a general way, the shoreline environment
2 designations--Urban, Conservancy, Natural--within Skamania County.
3 They cover large areas and lack detail reflective of peculiarities of
4 individual tracts. Nonetheless, the Conservancy designation along the
5 property in question is shown by a line of uniform thickness, which
6 appears to represent a 200-foot strip upland of the river.

7 VII

8 The enunciation of the criteria for "river deltas and flood
9 plains" in WAC 173-22-040(2)(a) was itself an act of "designation" as
10 that term is used in the SMA. See RCW 90.58.030(2)(f); RCW 90.58.120.

11 Where, as here, the sense of such criteria appears to have been
12 incorporated into the body of the approved master program, to provide
13 (as in WAC 173-22-055) that the criteria control over conflicting
14 maps, is consistent with the statute and the rule of liberal
15 construction. RCW 90.58.900. Administratively, this approach
16 provides the means for determining shorelines coverage precisely on a
17 site-specific basis. See Massey v. Island County, SHB No. 80-3
18 (1981); Citizens for Orderly Growth v. Skagit County, SHB No. 84-17
19 (1985).

20 We conclude, therefore, that the criteria control over any
21 conflict with the maps in this case. The geographic coverage of the
22 SMA, thus, extends over the 100-year flood plain, and we evaluate this
23 project on the basis that the entire area to be filled and the entire
24 boat harbor are within the shorelines of the Columbia River.

25
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VIII

We are not unmindful that both the SMA and the designation criteria of WAC 173-22-040 have been amended so that "wetlands" may now exclude all of the "flood plain" except that area 200 feet landward from the "floodway." But the statutory amendment came in 1975 after the adoption of the SCSMP and so did the amendments to the WAC.³ The SCSMP has never been amended to reflect these changes.

Moreover, neither the statutory amendment nor the regulation changes had the effect, in themselves, of changing the flood plain coverage of the SCSMP to less than the 100-year flood plain. The statutory amendment contains a proviso that

any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom. RCW 90.58.030(2)(f).

Skamania County adopted a larger area in 1974 and has never changed the scope of flood plain coverage under its master program. Master programs are adopted by WAC rulemaking and, absent statutory invalidation, their provisions can only be changed by such rulemaking. RCW 90.58.190, 90.58.120.

Since no WAC amendment changing the SCSMP on the matter of flood plains has been filed, the program remains as it was on this score

3. Section 1, chapter 182, Laws of 1975, 1st ex.sess., Order DE 76-30, filed July 27, 1976.

1 when first adopted.⁴

IX

3 Even if the SCSMP did not include the 100-year flood plain, we
4 believe that the shorelines would extend over most of the same area
5 under the facts of this case.

6 At the minimum "wetlands" extend landward 200 feet from the
7 ordinary high water mark (OHWM). RCW 90.58.030(2)(f). The creation
8 of the embayment involves the artificial enlargement of the area
9 touched by water. This means the OHWM would be moved to points along
10 the bank of the new harbor and its access channel.

11 In 1982, the policy section of the SMA was amended to provide that
12 alterations in the natural condition of the shorelines are to be
13 recognized and that the wetlands should be adjusted to reflect changes
14 whether occurring through man-made or natural causes.⁵

15 Originally the term "ordinary high water mark" referred only to
16 conditions existing in 1971 or naturally changing thereafter.⁶ Now
17

18 4. In 1980 DOE again amended its flood plain designation criteria to
19 state the following:

20 Wetland boundaries shall remain as the 100-year
21 floodplain boundary, as defined by Chapter 173-22
22 WAC, unless local government chooses to change the
23 wetland boundaries. WAC 173-22-040(2)(b).

24 In our view this formulation (Order DE 80-22, filed July 2, 1980)
25 is not an attempt to impose an interpretive standard
26 retroactively, but is merely declarative of what the law on this
27 subject has always been since the statutory amendment of 1975.

28 5. Chapter 13, Laws of 1982, 1st ex.sess.

29 6. Section 3, chapter 286, Laws of 1971, ex.sess.

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1 the term also includes artificial changes made in accordance with
2 governmental permits. RCW 90.58.030(2)(b).

3 We conclude that where the OHWM is to be moved by a project in a
4 manner which increases the water area, the "shoreline" boundary is
5 measured from the proposed new OHWM. Under this interpretation, the
6 200-foot shoreline strip would be measured from the banks of the
7 embayment, as well as from the river bank.⁷

8 X

9 We review the proposed development for consistency with the
10 applicable shoreline master program and the provisions of the
11 Shoreline Management Act, RCW 90.58.140.

12 XI

13 The SCSMP establishes three environment designations--Urban,
14 Conservancy and Natural--in descending order of permitted development
15 intensity.

16 The shoreline uses permitted in the Conservancy environment are:

17 Low density residential
18 Campgrounds, public and private
19 Public access areas, roads and trails

20 7. Because of our view of the geographic coverage of the SMA here, we
21 do not analyze the extent to which substantial development permit
22 decisions may be invalidated because of how they deal with
activities upland of the "shorelines."

23 The features of the project above the 100-year flood plain do not
24 appear to us to be inconsistent with either the SCSMP or the
provisions of the SMA. Thus, we need not pursue the question of
our authority to deal with inconsistencies on adjacent uplands.

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- Agriculture
- Aquaculture uses and structures
- Timber harvesting and management
- Necessary bridges
- Dredging
- Watercraft of all kinds
- Small boat ramps and basins
- Boat docks for pleasure craft
- Fishing and other water sports
- Shoreline protection works as part of another use of for protection of uplands
- Water control devices and structures
- Piling for log rafts
- Parking lots for vista purposes only

Hotels, motels, condominiums, restaurants, taverns and mining may be allowed as conditional uses only. All other uses are prohibited.

SCSMP, p. 34.

XII

The proposed subdivision fully complies with the lot size restrictions of the SCSMP and, thereby we conclude, qualifies as "low density residential" development as that term is used in the master program.

XIII

Dredging is listed as a permitted use and we see no conflict between the limited dredging proposed for the riverward extension of the access channel and the master program. The creation of the embayment itself is not dredging but rather the excavation of land.

Such excavation is not, we believe, mining as that term is used in the SCSMP, even though it would produce materials valuable as fill.

XIV

Landfills are not listed as permitted uses in the Conservancy

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environment. The Land Trust contends, nonetheless, that we should interpret the master program to allow implicitly the filling proposed here. The argument is that landfills must necessarily be authorized where needed to accomplish uses permitted outright, such as residential development.

The drafters of the SCSMP knew how to authorize landfills when they wanted to. Landfills are an explicitly authorized use in the Urban environment--the area set aside for the most intensive shoreline development. SCSMP, p. 31. The statement that residential structures may not be built in the flood plain unless on approved fill above the 100-year flood levels, SCSMP, p. 25, does not mean that fills must be allowed in the Conservancy environment. Residential development in the Conservancy environment can occur in areas where filling would not be required.

Furthermore, the landfill proposed here is much more than that necessary to elevate individual houses. The proposal is to fill the entire 100-year flood plain, 170,000 cubic yards of material, 17 acres of land, up to nine feet deep. This far exceeds filling which is merely incidental to a permitted use. The master program interpreted in this way could be construed as implicitly authorizing the filling of all of the 100-year flood plain within the entire Conservancy environment.

We do not believe that the Conservancy environment regulations which omit landfilling as a permitted use and state that all unlisted uses are prohibited can be stretched so far.⁸

1 Moreover, we note that the SCSMP policies on landfill state that
2 "priority should be given to landfills for water dependent uses and
3 for public uses." SCSMP, p. 17. There is nothing water dependent or
4 public about the private residential development for which the
5 landfilling would be done.

6 We conclude, therefore, that the landfill authorized by the permit
7 is inconsistent with the SCSMP.

8 XV

9 We reach the same conclusion about the proposed boating facility.
10 Neither marinas nor excavations are permitted uses within a
11 Conservancy environment, but "small boat ramps and basins" are
12 permitted. Parking lots are permitted "for vista purposes only."

13 The Land Trust argues that the proposed embayment and boat moorage
14 is not a marina but that it fits under the rubric "small boat ramps
15 and basins." The SCSMP defines marinas as "facilities which provide
16 boat launching, storage, supplies and services for small pleasure
17 craft." SCSMP, p. 19. The contention is that because the planned
18 artificial harbor would not be open to the general public and would
19 not have facilities for the sale of supplies and services, it is not a
20 marina as defined by the master program. We agree.

21
22 8. The Land Trust provided examples of incidental fill allowed in
23 the past and never legally challenged. Though the mere existence
24 of these fills does not demonstrate their legality, it is
25 interesting to note they are quite modest--1/2 acre and 8,700
cubic yards--not even approaching the size of the fill proposed
here.

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1 However, because the facility is not a marina does not
2 automatically include it among "small boat ramps and basins." The
3 latter expression is undefined in the SCSMP. The Land Trust argues
4 that the meaning of the term has nothing to do with size. We disagree.

5 The critical word is "small." Neither the boat population nor the
6 basin itself can be described as small. The harbor at "Hidden Harbor"
7 would be, far and away, the biggest boating facility in the vicinity.
8 It would dwarf other nearby launching and tie-up facilities brought to
9 our attention. Indeed, the lack of adequate facilities elsewhere is
10 the reason the boating facility proposed is thought to provide a
11 selling point for the subdivision.

12 The term "small boat ramp and basin" did not naturally occur to
13 the developer. Early in the promotion of the project, the term marina
14 was used to refer to the proposed boating facility as a whole, and
15 "small boat basin" was used to refer to one tie-up area within the
16 54-slip complex. Later the terminology changed, but not the plans for
17 the facility.

18 "Marinas and boat basins" are permitted in the Urban designation,
19 SCSMP, p. 31. The word "small" does not appear. Thus, we conclude
20 that where the word "small" does appear, it means something. We do
21 not believe that the term "small boat ramps and basins" as permitted
22 in the Conservancy environment was intended to refer to installations
23 of the size and scope of the one under consideration.

24 Our view is buttressed by the fact that the proposal would require
25 an excavation extending over three acres and about thirty feet deep,

1 producing 170,000 cubic yards of material. It is a tall order to
2 conclude that a hole in the earth this large was impliedly authorized
3 as a necessary incident to "small boat ramps and basins." In
4 addition, the proposal calls for a parking lot of uncertain size, but
5 large enough to incorporate an observation area, an area for cars and
6 a number of spaces for boat trailers. Again, such a facility does not
7 appear a necessary incident to "small boat ramps and basins."

8 We, therefore, conclude that the boating facility authorized by
9 the permit is inconsistent with the SCSMP.⁹

10 XVI

11 Finally, we turn to the project's consistency with the SMA itself.

12 To conduct our review for consistency with the statute, we must
13 know precisely what is being authorized and be given enough
14 information to determine the impacts what is authorized would have.

15
16 9. Because neither the landfill, the boating facility, the excavation
17 nor the parking lot involve permitted uses, the question arises
18 whether these activities could be accommodated under the SCSMP
19 provisions for variances.

20 The SCSMP provisions allow for the issuance of "use variances."
21 See Kooley & Pierce County v. DOE, SHB No. 218 (1976); La Valley &
22 Seattle v. DOE, SHB No. 78-7 (1978); WAC 173-14-150. However, the
23 variance criteria are extremely stringent requiring, inter alia
24 that

25 The property owner must show that if he complies with
26 the provisions he cannot make any reasonable use of
27 his property. (Emphasis added.) SCSMP, p. 51.

Also, DOE regulations disallow "use variances" for uses prohibited
by the master program. WAC 173-14-150(5), WAC 173-14-140(3).
These provisions may govern because they are even more stringent
than the master program here. WAC 173-14-155.

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1 See Hayes v. Yount, 87 Wn.2d 280, 552 P.2d 1038 (1976); SAVE v.
2 Bothell, SHB No. 82-29 (1983); Barden & Tacoma v. DOE, SHB No. 84-27
3 (1985).

4 XVII

5 For all shorelines, the policy of the SMA is a mandate for
6 coordinated state and local planning. "Reasonable and appropriate
7 uses" are to be fostered--uses which "promote and enhance the public
8 interest."

9 These general terms are given content by language emphatically
10 emphasizing environmental protection, public access to shorelines and
11 water dependent development.

12 The policy specifically calls for

13 protecting against adverse effects to the public
14 health, the land and its vegetation and wildlife and
15 the waters of the state and their aquatic life, while
protecting generally public rights of navigation and
corollary rights incidental thereto.

16 RCW 90.58.020

17 XVIII

18 Even were the landfill features of the project permissible under
19 the SCSMP, we conclude that the failure to analyze flood hazards
20 adequately prevents the Board from deciding that the development
21 accords with the general policies of the SMA.

22 While the construction of individual houses is not a part of the
23 instant subdivision project, such houses are a foreseeable consequence
24 of allowing the subdivision, and the prudence of this use of the site
25 is a proper consideration in reviewing the substantial development

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1 permit.

2 On the record before us, we cannot say that the construction of
3 residences on land fill at this highly erosive site with no bank
4 protection would protect against "adverse effects to the public
5 health" or that the proposed use of the site is "reasonable and
6 appropriate."

7 XIX

8 Even were the boating facility and its attendant excavation and
9 parking features permissible under the SCSMP, we conclude that the
10 failure to analyze the operation of this facility adequately prevents
11 the Board from deciding that the development accords with the general
12 policies of the SMA.

13 On the record before us, we cannot say that the introduction of a
14 large, though unspecified, number of boats in the embayment proposed
15 at the site in question would protect against "adverse effects to
16 the...waters of the state" or is a "reasonable and appropriate" use of
17 the shorelines.¹⁰

18
19 10. The SCSMP recognizes that "need" is a relevant consideration in
20 shoreline siting. The policy on marinas states:

21 Marina locations should be dispersed with particular emphasis
22 on locations near high-use areas. Local as well as regional
"needs" should be considered in selection of marina
locations. SCSMP, p. 19.

23 While the proposed boating facility is not a marina, the quoted
24 policy points out the kind of information which should attend the
analysis of whether any significant boating facility conforms to
25 the policies of the SMA. See Eichhoff v. Thurston County, 17
26 Wn.App. 774, 565 P.2d 1196 (1977); Anacortes-Fidalgo Bay Marina v.
DOE, SHB No. 82-30 (1985).

XX

Under RCW 90.58.020, specifically restrictive policies apply where shorelines of statewide significance are concerned. "The interest of all the people shall be paramount." On such shorelines uses are preferred in the following order of preference:

- (1) Recognize and protect the state-wide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

We conclude that the proposed development does not conform to the specifically enumerated preferences in the SMA for shorelines of statewide significance.

XXI

The excavation, dredging, filling, revegetating and eventual home building would intrude on the shoreline environment in the relatively unspoiled Columbia Gorge, an asset of all the people.

The issuance of the permit assumes the completion of this project. The evidence shows that this is likely not to occur. Under these circumstances, it does not appear that allowing this project to be undertaken on this site will "recognize and protect the state-wide interest over local interest" or "result in long term over short term benefits."

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1 In addition, seventeen acres of fill and a three-acre artificial
2 embayment do not "preserve the natural character of the shoreline,"
3 nor "protect the resources and ecology of the shoreline."

4 XXII

5 The project is wholly private. Apart from an access easement
6 along one boundary, the development of which is not provided for, the
7 project offers absolutely nothing for the improvement of public
8 access. The term "shorelines" includes water areas and, thus, the
9 river itself, a public resource, comes within the meaning of "publicly
10 owned areas of shorelines." RCW 90.58.030(2)(d).

11 The SCSMP policies on recreation speak of encouraging "the linkage
12 of shoreline parks and public access points through the use of linear
13 access." SCSMP, p. 24. No linear access is contemplated here. The
14 SCSMP policies on marinas state that "private marinas should be
15 encouraged to provide for public use of the facilities." SCSMP, p.
16 19. No public use of the facilities is planned.

17 These SCSMP policies exemplify the broad public access aims of the
18 SMA. The public access question in a shorelines case is not answered
19 by simply stating that private property will remain private.
20 Development of private property, at least on shorelines of state-wide
21 significance, is an opportunity for public access to be increased.

22 We conclude that the proposed project is inadequate to "increase
23 public access to publicly owned areas of the shorelines" or to
24 "increase recreational opportunities for the public in the
25 shoreline." See Silver Lake Community Council v. Everett, SHB

1 No. 80-4 (1980).

2 XXIII

3 The permit system of the SMA is inextricably interrelated with and
4 supplemented by the requirements of the State Environmental Policy Act
5 (SEPA), chapter 43.21C RCW. Sisley v. San Juan County, 89 Wn.2d 78,
6 569 P.2d 712 (1977). The Board's function includes review of
7 compliance with the requirements of SEPA.

8 XXIV

9 The adequacy of an EIS is a question of law. Barrie v. Kitsap
10 County, 93 Wn.2d 843, 613 P.2d 1148 (1980). The review is of whether
11 the project's environmental effects are reasonably disclosed. This
12 requires an analysis of ultimate probable consequences, including
13 those secondary and cumulative, whether social or economic. Cathcart
14 v. Shohomish County, 96 Wn.2d 201, 634 P.2d 853 (1981).

15 XXV

16 We conclude that the EIS for the "Hidden Harbor" project makes
17 inadequate disclosure of environmental effects in three areas: 1) the
18 flood hazard to residential development, particularly the homes on
19 landfill; 2) the effects of operating and maintaining a major boating
20 facility; 3) the demand for and economic viability of the total
21 proposed housing community, as it relates to the timing of ultimate
22 build-out or the possibility that such build-out may fail to occur.

23 The EIS is therefore inadequate.

24 XXVI

25 Having reached the above Conclusions, we hold that the substantial

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1 development permit which is the subject of this case must be reversed.

XXVIII

3 Any Finding of Fact which is deemed a Conclusion of Law is hereby
4 adopted as such.

5 From these Conclusions of Law the Board enters this
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ORDER

The shoreline substantial development permit granted by Skamania County to the Elizabeth Roane Jung Land Trust for the "Hidden Harbor" subdivision is reversed.

DONE at Lacey, Washington, this 22 day of February, 1986.

SHORELINES HEARINGS BOARD



WICK DUFFORD, Lawyer Member



GAYLE ROTHROCK, Vice Chairman

 2/27/86

LAWRENCE J. FAULK, Chairman



NANCY R. BURNETT, Member



RODNEY M. KERSLAKE, Member



LES ELDRIDGE, Member